

W. J. Jones



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: American Management Company--Request for  
Reconsideration  
File: B-228280.2  
Date: March 7, 1988

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### DIGEST

Request for reconsideration is denied where protester fails to show that decision was based on error of fact or law.

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### DECISION

American Management Company (AMC) requests reconsideration of our decision in American Management Co., B-228280, - Jan. 15, 1988, 88-1 CPD ¶ \_\_\_\_\_, in which we denied AMC's protest against the award of a lease contract to Metcalf Realty and the subsequent decision to cancel the underlying solicitation for offer (SFO) No. RAL-86081, issued by the General Services Administration (GSA). We deny the request for reconsideration.

AMC originally contended that award to Metcalf was improper on the ground that GSA conducted a second round of discussions--after receipt of best and final offers--with only one offeror, Metcalf, to AMC's prejudice. Additionally, following the termination for default of Metcalf's lease, AMC challenged GSA's decision to cancel the SFO and resolicit the space requirements. AMC asserted that the decision to cancel the solicitation had no reasonable basis and was merely an attempt to deny the firm the award.

GSA, in response, explained that because the SFO did not include the current fire safety requirements for leased space, the solicitation was defective and the agency therefore decided to cancel and resolicit the requirements under revised specifications. Another reason advanced by the agency as support for its decision to cancel was the fact that subsequent to the filing of the protest, the tenant agency's space requirements had increased. Thus, by resoliciting, GSA intended to both cure the deficiency in the solicitation as well as meet the increased needs of its tenant.

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We held that GSA had bona fide fire safety requirements which had been omitted from the solicitation and this omission provided a reasonable basis for canceling the SFO. We also found that the increased space requirements provided further justification for GSA's decision to resolicit the space using revised specifications.

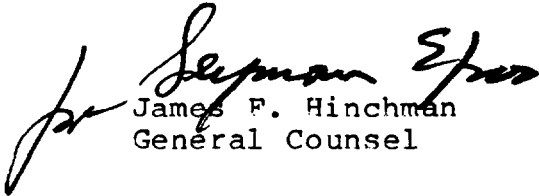
In its request for reconsideration, AMC contends that GSA's decision was made in such disregard of the agency's alleged initial position, during the pendency of the protest, as to constitute bad faith. Specifically, the protester asserts that on November 18, 1987, GSA's stated position was that the tenant agency's request for an additional 4,152 square feet of space would be obtained under a separate procurement action. However, on December 3, GSA allegedly espoused a "diametrically opposed" argument when it asserted that the additional space requirement provided a reasonable basis to resolicit. Hence, AMC contends that GSA acted in bad faith by disregarding its "earlier stated position in this protest." On this basis, AMC asserts that the agency's actions have tainted the other independent basis for cancellation and resolicitation; that is, the omission of current fire safety requirements in the solicitation. AMC requests therefore that we reverse our prior decision and recommend that GSA reinstate the SFO; issue an amendment to incorporate the current fire safety and additional space requirements; and conduct further negotiations leading to the submission of best and final offers. Alternatively, the protester seeks reimbursement of its costs of filing and pursuing the protest, including attorneys fees.

We find nothing in AMC's arguments that calls into question the conclusions reached in our prior decision. It remains our view that GSA's decision to cancel and resolicit the requirements was reasonable. As we pointed out in our prior decision, any information relating to whether there is sufficient reason to cancel a solicitation can be considered no matter when the information which justifies the cancellation first surfaces. This is so even where the original reasons for the cancellation action were not reasonable and the new reasons justifying the cancellation were only first raised by the procuring agency in response to a protest to our Office.

We have found no evidence to support AMC's allegation that GSA's arguments in support of its decision to cancel the solicitation constituted bad faith. In order to show bad

faith, a protester must submit essentially irrefutable proof that the contracting agency directed its actions with the specific and malicious intent to injure the protester. J. Carver Enterprises, B-227359, Sept. 3, 1987, 87-2, CPD ¶ 220 at 4. AMC has not done so.

Since AMC has not shown that our decision was based on an error of fact or law, the request for reconsideration is denied. Bid Protest Regulations, 4 C.F.R. § 21.12(1987). It follows that AMC's claim for costs is also denied since we have found no improper agency action. 4 C.F.R. § 21.6(d), (e).

  
James F. Hinchman  
General Counsel